man. *Nicholas Farwell v. Boston & Worcester R. R.*, 4 Met. 59; and later cases declared a carpenter and a switchman, a laborer and trainmen, fellow servants. *Gilman v. Eastern R. R. Co.*, 10 Allen 233; *Gilshannon v. Stony Brook R. R.*, 10 Cush. 228. And in *Lehigh Valley Coal Co. v. Jones*, 86 Pa. 432, it was said not to be essential that workmen should be engaged in the same particular work to be fellow servants. But *contra* to the rule, in *Toledo, etc., R. R. Co. v. O'Connor*, 77 Ill. 391, a laborer and an engine driver were held not to be fellow servants; and so as to a section man and a foreman, *Union Pacific R. R. Co. v. Erickson*, 41 Neb. 1. In Ohio a conductor and an engineer were declared not to be fellow servants. *Little Miami R. R. Co. v. Stevens*, 20 Ohio 415; and the same conclusion was reached in *Chicago, Milwaukee & St. Paul Ry. Co. v. Ross*, 112 U. S. 377, but under strong dissent.

MASTER AND SERVANT—INJURIES TO SERVANT—ASSUMPTION OF RISK.—LYON V. CHARLESTON & W. C. RY., 58 S. E. 13 (S. C.)—*Held*, where a flagman injured while uncoupling cars under the order of the conductor, which duty was within his employment, he assumed the risk. Gary, A. J., *dissenting.*

An employee cannot recover for an injury resulting from one of the usual risks or hazards connected with the business into which he has entered, and which the law will consider he assumed when undertaking the duties of the position. *Woodworth v. St. Paul M. & M. R. R. Co.* (C. C.) 18 Fed. 282. This rule is practically settled in the U. S. But he may contract to the contrary, *Foster v. Pussey*, 14 Atl. 545. A railroad brakeman assumes all the *ordinary* risks of the employment, *Chicago R. I. & P. Ry. Co. v. Clark*, 108 Ill. 113, but where a master coerces a servant into entering a dangerous employment the servant does not assume the risk, *Wells & French Co. v. Gortorski*, 50 Ill. App. 445. Again, the master may, if he chooses, carry on his business with an old machine rather than a new one, and a threat to discharge a servant unless he will perform the stipulated service, is not coercion, *Sweeny v. Berlin & Jones Envelope Co.*, 101 N. Y. 520. The dissenting opinion on the main case is a very strong one and he bases his opinion on the fact that the distinction between contributory negligence and assumption of risk is not a very shadowy one as the U. S. Supreme Court laid down in *Schlemmer v. Railroad*, 27 Sup. Ct. 407, but distinct and clear.

MASTER AND SERVANT—INJURIES TO THIRD PERSONS—LIABILITY OF MASTER—SAVANNAH ELECTRIC CO. V. WHEELER, ET AL., 58 S. E. 38 (GA.).—*Held*, that allegations that the company knowingly placed in charge of one of its passenger cars a conductor of bad character, who was drunk and armed with a pistol, and that a homicide occurred in the manner indicated in the preceding note, were not demurrable.

NEGLIGENCE—IMPUTED NEGLIGENCE.—DOCTOROFF V. METROPOLITAN ST. RY. CO., 105 N. Y. SUP. 229.—*Held*, that where the servant was riding on a truck, driven by his master at the time of the servant's injury in a collision between the truck and one of defendant's street cars, the negligence of the master, if any, was not imputable to the servant.

In general the concurrent negligence of third parties is no defense. *Getty v. Consolidated Gas Co.*, 96 Md. 683. But in the case of public conveyances in *Thorogood v. Bryan*, 8 C. B. 115, it was said that the plaintiff

being a passenger voluntarily, was so far identified with the carriage that want of care on the part of the driver would bar plaintiff's action. And this doctrine has been followed in some of the states. See *Lockhart v. Lichtenthaler,* 46 Pa. St. 151. But has been overruled in England, *The Bernina, L. R.,* 12 Prob. Div. 58; and repudiated by the United States Supreme Court, *Little v. Hackett,* 116 U. S. 366; the weight of authority being strongly against it. *Eaton v. Boston, etc., R. Co.,* 11 Allen (Mass.) 500. And as to private conveyances, *Doctoroff v. Metropolitan St. Ry. Co., supra,* is in harmony with the general trend of the more recent decisions. *Cooley on Torts* (3d Ed.), 1473; *Hoag v. N. Y. Cent., etc., R. Co.,* 111 N. Y. 199. But if the driver is under plaintiff's control, his negligence is imputable. *Read v. City and Suburban Ry. Co.,* 115 Ga. 366. Or if two are engaged in a joint enterprise and each has an equal right to direct movement of the vehicle. *Boyden v. Fitchburg R. Co.,* 72 Vt. 89. However, in *Lake Shore, etc., R. Co. v. Miller,* 25 Mich. 274, it was held that the contributory negligence of a master is imputable to servant; and of a husband to wife in *G., C. & S. F. Ry. Co. v. Greenlee,* 62 Tex. 344. And the doctrine of *Thorogood v. Bryan, supra,* is approved as to private conveyances in *Prideaux v. City of Mineral Point,* 43 Wis. 513.

NEGLIGENCE—IMPUTED NEGLIGENCE—PARENT AND CHILD.—ATCHISON, T. & S. F. RY. CO. v. CALHOUN, 89 PAC. 207 (OKLA.)—*Held,* that in an action by an infant of tender years, in its own right, for personal injuries arising from negligence of a railway company, the fault or negligence of its mother or a third party, if any, contributing to such injury, cannot be imputed to the child.

In this country much conflict exists in the law on this subject. In England, the negligence of the custodian is imputed to the infant and recovery is denied. *Waite v. Northeast R. Co.,* El. Bl. & El., 719; *Singleton v. Eastern Counties R. Co.,* 7 C. B. (N. S.) 287. In the United States the leading case in harmony with the English rule is *Hartfielder v. Roper,* 21 Wend. (N. Y.) 615, where it was held that a child of two years who was run over while playing in the public street, was not entitled to recover for the negligent injury, because of the negligence of the parents in thus exposing him to injury. This case has been followed in several states: *Casey v. Smith,* 152 Mass. 294; *Cumberland v. Lottig,* 95 Md. 42; *Leslie v. Lewiston,* 62 Me. 468. But in at least twenty-three states its doctrine has been repudiated: *inter alia,* see *Robinson v. Cone,* 22 Vt. 213; *Erie Pass. Ry. Co. v. Schuster,* 113 Pa. St. 412; *Chicago City Ry. Co. v. Wilcox,* 138 Ill. 370. In a suit by the parent in his own behalf for an injury to the child, the plaintiff's contributory negligence is a defense. *Williams v. Texas, etc., Co.,* 60 Tex. 205; *Tucker v. Draper,* 62 Neb. 66. But the negligence of one parent will not defeat the action of another. *Atlanta, etc., Ry. Co. v. Gravitt,* 93 Ga. 369; *contra, Toner v. South Covington, etc., St. Ry. Co.,* 109 Ky. 41.

PARTITION—SCOPE OF INQUIRY.—ROLB V. EVERETT, 65 ATL. (N. J.) 732.—*Held,* that in a suit for partition the court would not determine the validity of a tax title asserted by defendant, but would hold the case to await the decision of a court of law as to the validity of such title.

Bills for partition of land must allege a seisin in possession in both complainant and defendant. *Culver v. Culver,* 2 Root (Conn.) 278. *Bolin v. Jacquelin,* 22 N. Y. Supp. 193. At common law neither title nor right to